

HESKETH HENRY – LEGAL BRIEF

Personal Property Securities Act

An unknown aspect of the Personal Property Securities Act (PPSA) is that if a debtor who has a charge registered over it on the Personal Property Securities Register (PPSR), changes its name **and** the secured party has knowledge of the name change, then the secured party must register a financing change statement (amending the initial financing statement to record the name change) within 15 calendar days of acquiring the knowledge.

What is "knowledge" is deemed by the PPSA to exist where "the fact is communicated to the organization in such a way that it would have been brought to the attention of the person with responsibility for matters to which the transaction relates if the organisation had exercised reasonable care".

This leaves secured creditors with a positive obligation to exercise "reasonable care" when receiving notice that a debtor has changed its name. "Reasonable care" is deemed by the PPSA to have been exercised where an organisation "takes reasonable steps to ensure that significant information is brought to the attention of the person within the organisation with responsibility for matters to which a particular transaction relates".

This arguably means that if a debtor changes its name, does not notify the secured party but the secured party receives a cheque from the debtor with the debtor's new name pre-printed, then this will constitute knowledge. This argument becomes stronger if the secured party had been receiving cheques, evidencing the new company name of the debtor for some time and the secured party did not register a financing change statement.

If it is proved that a secured party has knowledge of a debtor's name change and fails to register a financing change statement (or take possession of the secured property) within the 15 day period, then the secured party loses all priority over the security in relation to other secured parties.

It is prudent for secured parties to take steps to ensure that information relating to a debtor's name change is brought to the attention of the responsible person and that they act promptly to register a financing change statement (or take possession of the secured property).

If you have any queries in relation to the above, please contact Geoff Hosking on 09 375 8693.



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